

Serial No.: 09/917,549

PATENT APPLICATION
Docket No.: NC 79,356

REMARKS

Claims 29 and 47-73 are pending in the application. Claims 47-73 have been added by this amendment, the excess claim fees for which were paid when the application was filed. No claims are presently allowed.

Claim 29 has been amended to recite that the fluid is drawn from a reservoir only when at least the negative pressure source is activated and when the respective reservoir is unsealed. Support for this amendment is found at page 8, lines 24-26. The limitation regarding the Reynolds number has been moved to the end of the claim to provide antecedent bases for "said selective fluid drawing."

New claims 47-63 are system claims depending from claim 29, which correspond to original claims 2-16, 27, and 28.

New claims 64-67 are system claims and correspond to original claims 17-20. Claim 64 (65-67 dependent thereon) now contains the limitations regarding the Reynolds number and the restriction that the fluid flow only when at least the negative pressure source is activated and when the reservoir is unsealed.

New claims 68-73 are method claims and correspond to original claims 21-26. Claims 68, 69 (70-72 dependent thereon), and 73 now contain the limitation regarding the Reynolds number. No new matter has been added.

Interview Summary

Inventor Mark Feldstein, Applicant's representative Joe Grunkemeyer, and Examiner Jan Ludlow conducted a telephone interview on 02/17/2005. The Examiner's position was that the vacuum source 128 in the Shettigar reference was connected to the output of the second conduit 141 by way of the filtrate receptacle 148. It was discussed that when valve 212 was turned towards 240, then the valve would sealed and no fluid could be drawn from the reservoir 170. The Examiner agreed that additional dependent apparatus claims could be added as well as additional method claims if they recited all the limitations of claim 29 and an active step. The Examiner also agreed that Shettigar did not teach or suggest a method as disclosed in the present application.

Claim Rejections – 35 U.S.C. § 102

Claim 29 has been rejected under 35 U.S.C § 102(b) as allegedly anticipated by Shettigar et al. (US 5,055,198). Although the Examiner does not contend that Shettigar expressly teaches configuring or using a device as claimed, the Examiner's position appears to be that Shettigar inherently could be configured as a device within the scope of the claim 29. Applicant respectfully traverses the rejection.

Claim 29 is directed to a fluidics system comprising a primary fluid channel, enclosed first and second reservoirs connected to the primary fluid channel input, and a negative pressure connected to the primary fluid channel output, as more specifically set forth in listing of claims above. As also recited, each of the first and second reservoirs comprises an adjustable vent. Claim 29, as amended herein, further recites that "the fluidics system is configured to selectively draw at least one fluid from at least one of the first and second reservoirs into the primary fluid channel only when at least the negative pressure source is activated and when the respective reservoir is unsealed" and that "the primary fluid channel is configured to have a characteristic dimension such that the selective fluid drawing is not a low Reynolds number fluid flow."

Shettigar discloses an apparatus for recycling and reinfusion of autologous blood from a patient. The apparatus (Fig. 12) includes a second conduit 141 having an input and an output, two blood collection bags 170, 214 having valves 212, 220 and air filters 240, 241 connected to the conduit 141, and a vacuum source 128. The vacuum source 128 is connected to the conduit by way of a vacuum line 242, filtrate receptacle 148, filtration line 145, and membrane filter 138.

In order to make a *prima facie* case of anticipation, the reference must disclose each limitation of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053, 814 F.2d 628, 631 (Fed. Cir. 1987); MPEP 2131. Among other deficiencies, the reference does not disclose the a "fluidics system [that] is configured to selectively draw at least one fluid from at least one of the first and second reservoirs into the primary fluid channel only when at least the negative pressure source is activated." In order to meet this limitation, an apparatus should not be capable of allowing the fluid to be drawn unless the negative pressure source is activated. Note that the use of the words "at least" in the claim is to indicate that other conditions may or may not be present within the scope of the claim.

The apparatus of Shettigar is not inherently configured to draw fluid from the blood collection bags while the vacuum source is not active, and there is no teaching or suggestion to

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modify Shettigar to be so configured. When the valves 212, 220 are directed toward the air filters 240, 241, air can enter the bags, allowing blood to drain from the bags and into the conduit 141 (col. 22, line 68-col. 23, line 9). It appears that the blood is drained from the bag due to gravity and not due to negative pressure. Thus, when a valve 212,220 is connected to air 240, 241 fluid is drawn from the bag regardless of whether the vacuum source is activated or applied to the conduit, which does not meet the subject limitation. Further, when valve 212, 220 is connected toward vacuum source 128, fluid would flow into collection bags 170, 214, as per the intended use and design of Shettigar. (*See, e.g.*, col. 22, lines 19-25.)

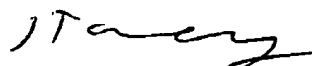
Claims 47-63, which depend from claim 29, and claims 64-67 are asserted to be distinguished from the reference for at least the reasons above

Claims 68-73 are method claims reciting that fluid moves from a reservoir into a primary fluid channel when a negative pressure source is activated. This method is not disclosed in Shettigar. In Shettigar, the vacuum source is used to fill the bags, not to drain them. Applicant wishes to note that similar method claims, different only in lacking the Reynolds number limitation, were not subject to a restriction requirement in any office action while the method claims were pending.

In view of the foregoing, it is submitted that the application is now in condition for allowance.

In the event that a fee is required, please charge the fee to Deposit Account No. 50-0281, and in the event that there is a credit due, please credit Deposit Account No. 50-0281.

Respectfully submitted,



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